

# SENATE . . . . . No. 2572

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## The Commonwealth of Massachusetts

PRESENTED BY:

**Sonia Chang-Díaz (BY REQUEST)**

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act Relative to Homeowners' Insurance Coverage and Toxic Drywall.**

PETITION OF:

NAME:

Dianne Van der Meer

DISTRICT/ADDRESS:

6 Weld Avenue  
Roxbury, MA 02119

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## An Act Relative to Homeowners' Insurance Coverage and Toxic Drywall.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

**SECTION 1.** Chapter 175 of the General Laws is hereby amended by inserting after section 4D the following 3 sections:-

Section 4E. (a) As used in sections 4F and 4G, unless the context clearly requires otherwise, the following terms shall have the following meanings:-

“Association”, the joint underwriting association formed pursuant to chapter 175C.

“Division”, the division of insurance.

“Residential property”, a 1- to 4-unit dwelling used for living or sleeping.

“Toxic drywall”, drywall, wallboard or any other product used to construct walls, ceilings or other barriers in a residential property which emits a volatile sulfur compound and strontium sulfide.

Section 4F. Notwithstanding any general or special law or regulation to the contrary, no insurer licensed to write and engaged in the writing of homeowners' insurance, nor the

association, shall cancel or void any homeowners' insurance policy in effect on or before January 1, 2011, based upon the presence of toxic drywall in such policy holder's residential property. If such an insurer or the association receives a claim, timely filed, for damage related to the presence of toxic drywall in a residential policy holder's property, such claim shall be paid in accordance with regulations adopted by the division for such claims.

Section 4G. (a) Notwithstanding any general or special law or regulation to the contrary, each insurer licensed to write and engaged in the writing of homeowners' insurance and the association, shall make the following coverage available to residential owners:

(1) first-party property coverage for removal and replacement of toxic drywall in a residential property built or rehabilitated during or between the years 2000 to 2011; and

(2) liability coverage for third-party claims arising out of the presence of toxic drywall in a residential property. Minimum coverage of \$10,000 per occurrence for first-party property, minimum coverage of \$10,000 per occurrence for third-party liability and for legal defense costs shall be made available, subject to a reasonable deductible not to exceed \$1,000 per claim.

(b) As a precondition to issuing the coverage required under subsection (a), an insurer or the association may require that the results of a toxic drywall assessment, conducted in accordance with regulations of the division relative to such inspections, shall be paid by the homeowner. If the assessment reveals the presence of toxic drywall, the homeowner shall be provided opportunity to seek redress against the contractor that installed the toxic drywall or the

supplier of the toxic drywall before a decision relative to coverage pursuant to this section is rendered.

(c) If an assessment reveals the presence of toxic drywall and, after the homeowner has been provided opportunity to seek the redress described in subsection (b), an insurer or the association may reject an application for such coverage based upon the positive assessment.

(d) For the purposes of this section, first-party property coverage shall include response action costs incurred to assess and remediate the presence of toxic drywall in the insured's property and the reimbursement of any associated personal property damage or bodily injury. Third-party liability coverage shall defend and indemnify the insured against any third-party claims and shall include response action costs incurred to address conditions in the insured's property arising from the presence of toxic drywall in the insured's property that has impacted or is likely to impact a third party. First-party and third-party liability coverage shall apply simultaneously and, in addition to, one another when both coverages are applicable. Insurers may charge reasonable premiums for such coverage.

**SECTION 2.** The division of insurance shall adopt regulations to carry out sections 4E to 4G, inclusive of chapter 175 of the General Laws, on or before December 1, 2010; provided, however that such regulations shall include, but not be limited to, a requirement that each insurer licensed to write and engaged in the writing of homeowners' insurance in the commonwealth and the joint underwriting association formed pursuant to chapter 175C of the General Laws, shall provide payment for valid claims for damage related to the presence of toxic drywall in residential policy holders' property, subject to such monetary limits and within such time limitations for the filing of such claims as the division deems reasonable for damage caused by

toxic drywall between January 1, 2000 and December 31, 2011; and, provided further, that such regulations shall provide for: a list of contractors, certified to conduct toxic drywall assessments consistent with the purposes of this act; the method of conducting such an assessment in order to reveal the presence of toxic drywall and any damage caused thereby, or potential damage, to the structure or inhabitants thereof due to such drywall; and recording of the assessment results on a form to be prescribed by the commissioner of said division.

**SECTION 3.** Chapter 270 of the General Laws is hereby amended by adding the following section:-

Section 25. (a) For the purpose of this section, the term “toxic drywall” shall mean drywall, wallboard or any other product used to construct walls, ceilings or other barriers in a residential property and which emits a volatile sulfur compound and strontium sulfide.

(b) (1) Whoever distributes, sells or offers for sale toxic drywall or whoever installs or otherwise uses toxic drywall in the construction of any structure designed to be inhabited or used by any person, shall be punished by a fine of \$10,000.

(2) A violation of paragraph (1) shall constitute an unfair or deceptive act or practice pursuant to chapter 93A.

(c) Whoever holds himself out to be a contractor, whether or not a holder of a license therefore, and wantonly or recklessly installs toxic drywall in any residential structure for another, or permits his agent to do so, shall be strictly liable to the owner of such structure for any civil damages caused thereby.

75           **SECTION 4.** Sections 4E and 4F of chapter 175 of the General Laws, inserted by  
76 section 1 shall take effect within 120 days of passage of this act.

77           **SECTION 5.** Section 4F of chapter 175 of the General Laws is hereby repealed.

78           **SECTION 6.** Section 4G of chapter 175 of the General Laws, inserted by section 1,  
79 shall take effect on January 1, 2011.

80           **SECTION 7.** Section 5 shall take effect on January 1, 2011.